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5. Legislative and Policy Overview

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5. Legislative and Policy Overview

5.1 Introduction

5.1.1 This chapter provides an overview of the relevant legislation and policy against which the Development Consent Order (DCO) application for Yorkshire Green Energy Enablement (GREEN) Project (here on referred to as the Project or Yorkshire GREEN) will be assessed. Each environmental aspect chapter (**Chapters 6 to 18, Volume 5, Documents 5.2.6 to 5.2.18**) of the Environmental Statement (ES) provides a summary of the key legislation relevant to the specific aspect assessment. An assessment of the Project in terms of compliance with planning law and policies, is provided in a separate Planning Statement (**Volume 7, Document 7.1**) which accompanies this DCO application.

5.2 Legislative context

Planning legislation

- 5.2.1 The Project is defined as a Nationally Significant Infrastructure Project (NSIP) under Section 14(1)(b) and Section 16 of the Planning Act 2008¹ (the Act) as it comprises the installation of an electric line above ground wholly within England with a nominal voltage of more than 132kV and a length of more than 2km. Therefore, a DCO is required to authorise the Project.
- 5.2.2 Section 104 of the Act¹ requires that DCO applications must be determined in accordance with the requirements of the relevant National Policy Statements (NPSs), except to the extent that one or more of subsections (4) to (8) of s.104 of the Act apply, as set out below. The NPSs provide the overarching principles relevant to major energy infrastructure and the policies against which applications for NSIPs should be determined.
- 5.2.3 The Act¹ was amended through the adoption of the Localism Act 2011². This transferred decision-making responsibilities to the relevant Secretary of State (SoS) which for this Project is the SoS for Business, Energy and Industrial Strategy (BEIS). Under the Localism Act 2011, the Planning Inspectorate is responsible for the NSIP planning process and will examine the application for the Project and make a recommendation to the SoS to grant or refuse consent. On receipt of the report and recommendation from the Planning Inspectorate, the SoS will then make the final decision on whether to grant the DCO for the Project.

Environmental legislation

5.2.4 A summary of relevant environmental legislation is provided below. This summary is not exhaustive, and each individual environmental aspect chapter describes the legislation,

¹ UK Government (2008) The Planning Act 2008 (Online). Available at: <https://www.legislation.gov.uk/ukpga/2008/29/enacted> (Accessed 14 October 2021)

² UK Government (2011). Localism Act 2011 (Online). Available at: <https://www.legislation.gov.uk/ukpga/2011/20/enacted> (Accessed 14 October 2021)

policy and guidance relevant to its assessment (**Environmental Statement Chapters 6 to 18, Volume 5, Documents 5.2.6 to 5.2.18**).

International legislation

- 5.2.5 UK environmental legislation is derived from a range of sources (including European Union (EU) directives, regulations and agreements) which are outlined in this Chapter.
- 5.2.6 On 31 December 2020 the UK exited the “implementation period” provided for by the European Union (Withdrawal) Act 2018 (Withdrawal Act 2018)³. Sections 2 and 3 of the Withdrawal Act 2018, as amended, provide that direct EU legislation, and EU-derived domestic legislation, continue to have effect in domestic law after that day. In summary, the interpretation of any retained EU law is to be the same as it was before that day, insofar as the retained EU law remains unmodified in UK law and regulations have not been made providing otherwise (Regulation 6(3) of the Withdrawal Act 2018).
- 5.2.7 The European Union (Withdrawal) Act 2020⁴ ensured that all EU legislation which had not already been transposed into UK law at the point at which the UK left the EU was transferred to the UK statute. The European Union (Withdrawal) Act 2020 guarantees that those laws remain unchanged until amended or rescinded by Parliament.
- 5.2.8 The following Directives, as they have been given effect in UK domestic legislation, are therefore relevant to the Project and are referred to where required in the relevant ES environmental aspect **Chapters 6 to 18 (Volume 5, Documents 5.2.6 to 5.2.18)**:
- Environmental Impact Assessment (EIA) Directive (2011/92/EU) (as amended by EIA Directive 2014/52/EU)⁵ (EIA Directive);
 - Habitats Directive (92/43/EEC)⁶;
 - Air Quality Directive (2008/50/EC)⁷;
 - Birds Directive (2009/147/EC)⁸;

³ UK Government (2018). European Union (Withdrawal) Act 2018 (Online) Available at: <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted> (Accessed 28 October 2022).

⁴ UK Government (2020). European Union (Withdrawal Agreement) Act 2020. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted> (Accessed 28 October 2022).

⁵ European Commission (2014). Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. (Online) Available at: [REDACTED] (Accessed 28 October 2022).

⁶ European Commission (1992). Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. (Online) Available at: [REDACTED] (Accessed 28 October 2022).

⁷ European Commission (2008). Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. (Online) Available at: [REDACTED] (Accessed 28 October 2022).

⁸ European Commission (2009). Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. (Online) Available at: [REDACTED] (Accessed 28 October 2022).

- Water Framework Directive (2000/60/EC)⁹;
- Priority Substances Directive (2008/105/EC) Revision of the Priority Substances Directive (2013/39/EU)¹⁰; and
- The EU Floods Directive (2007/60/EC)¹¹.

5.2.9 The purpose of the EIA Directive is to ensure that when an authority giving consent for a particular project makes its decision, it does so in the knowledge of any likely significant effects on the environment. The EIA Directive and EIA Regulations (see below) set out a procedure that must be followed for certain types of projects before they can be consented. An EIA provides for the systematic assessment of a project's likely significant environmental effects for consideration by both the public and the relevant competent authority (in this case the SoS) before a decision is made. Further information on the process of EIA is provided in **ES Chapter 4: Approach to Preparing the ES (Volume 5, Document 5.2.4)**.

National legislation

5.2.10 The following legislation and regulations are relevant to the Project and are referred to where required in the relevant **Environmental Statement Chapters 6 to 18 (Volume 5, Documents 5.2.6 to 5.2.18)**:

- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)¹² (EIA Regulations);
- The Agriculture Act 2020¹³;
- The Air Quality (England) Regulations 2000¹⁴;
- The Air Quality (Amendment) (England) Regulations 2002¹⁵;

⁹ European Commission (2000). Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

¹⁰ European Commission (2013). Directive 2013/39/EU of the European Parliament and of the Council amending Directives 2000/60/EC and 2008/105/EC as regards priority substances in the field of water policy.

¹¹ European Commission (2007). Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks.

¹² UK Government (2017). The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. SI 2017 No. 572. (Online) Available at:

<https://www.legislation.gov.uk/ukxi/2017/572/contents/made> (Accessed 28 October 2022).

¹³ UK Government (2020). The Agriculture Act 2020 C.21. (Online) Available at:

<https://www.legislation.gov.uk/ukpga/2020/21/contents/enacted/data.htm> (Accessed 28 October 2020).

¹⁴ UK Government (2000). The Air Quality (England) Regulations 2000. SI 2000 No. 928.

(Online) Available at: <https://www.legislation.gov.uk/ukxi/2000/928/contents/made> (Accessed 28 October 2022).

¹⁵ UK Government (2002). The Air Quality (Amendment) (England) Regulations 2002. SI 2002 No. 3043. (Online) Available at: <https://www.legislation.gov.uk/ukxi/2002/3043/contents/made> (Accessed 28 October 2022).

- The Air Quality Standards (England) Regulations 2010¹⁶;
- The Air Quality Standards (Amendment) Regulations 2016¹⁷;
- The Ancient Monuments and Archaeological Areas Act 1979¹⁸;
- Protection of Badgers Act 1992¹⁹;
- Burial Act 1857²⁰;
- The Climate Change Act 2008²¹;
- The Climate Change Act 2008 (2050 Target Amendment) Order 2019²²;
- The Conservation of Habitats and Species Regulations 2017²³;
- The Commons Act 2006²⁴;
- The Control of Pollution Act 1974 (CoPA) (as amended)²⁵;
- The Construction Design and Management (CDM) Regulations 2015²⁶;
- The Countryside and Rights of Way Act 2000²⁷;

¹⁶ UK Government (2010). The Air Quality Standards Regulations 2010. SI 2010 No 1001. (Online) Available at: <https://www.legislation.gov.uk/ukxi/2010/1001/contents/made> (Accessed 28 October 2010).

¹⁷ UK Government (2016). The Air Quality Standards (Amendment) Regulations 2016. SI No 1184. (Online) Available at: <https://www.legislation.gov.uk/ukxi/2016/1184/contents/made> (Accessed 28 October 2022).

¹⁸ UK Government (1979). The Ancient Monuments and Archaeological Areas Act 1979 C.46. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1979/46> (Accessed 28 October 2022).

¹⁹ UK Government (1992). Protection of Badgers Act 1992 c.51. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1992/51/contents> (Accessed 28 October 2022).

²⁰ UK Government (1857). The Burial Act 1857 C. 81. (Online) Available at: <https://www.legislation.gov.uk/ukpga/Vict/20-21/81/contents> (Accessed 28 October 2022).

²¹ UK Government (2008). The Climate Change Act 2008 c. 27. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2008/27/contents> (Accessed 28 October 2022).

²² UK Government (2019). The Climate Change Act 2008 (2050 Target Amendment) Order 2019 No.1056. (Online) Available at: <https://www.legislation.gov.uk/ukdsi/2019/9780111187654> (Accessed 28 October 2022).

²³ UK Government (2017). The Conservation of Habitats and Species Regulations 2017. SI 2017 No. 1012. (Online) Available at: <https://www.legislation.gov.uk/ukxi/2017/1012/contents/made> (Accessed 28 October 2022).

²⁴ UK Government (2006). The Commons Act 2006 C.26. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2006/26/contents> (Accessed 28 October 2022).

²⁵ UK Government (1974). The Control of Pollution Act (CoPA) 1974. SI 1974 c.40. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1974/40> (Accessed 28 October 2022).

²⁶ UK Government (2015). The Construction Design and Management (CDM) Regulations 2015 No. 51. (Online) Available at: <https://www.legislation.gov.uk/ukxi/2015/51/contents/made> (Accessed 28 October 2022).

²⁷ UK Government (2000). The Countryside and Rights of Way Act 2000. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2000/37/contents> (Accessed 28 October 2022).

- The Environmental Protection Act 1990 (as amended)²⁸;
- The Environment Act 1995²⁹;
- The Environment Act 2021³⁰;
- The Energy Act 2016³¹;
- The Flood and Water Management Act 2010³²;
- The Flood Risk Regulations 2009³³;
- The Wildlife and Countryside Act 1981 (as amended)³⁴;
- The Natural Environmental and Rural Communities Act 2006 (NERC) (as amended)³⁵;
- The Hedgerow Regulations 1997³⁶;
- The Highways Act 1980³⁷;
- The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015³⁸;
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017³⁹;

²⁸ UK Government (1990). The Environmental Protection Act 1990. SI 1990 c.43. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1990/43/contents> (Accessed 28 October 2022).

²⁹ UK Government (1995). The Environment Act 1995 c.25. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1995/25/contents> (Accessed 28 October 2022).

³⁰ UK Government (2021). The Environment Act 2021, c. 30. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted> (Accessed 28 October 2022).

³¹ UK Government (2016). The Energy Act 2016 c.20. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2016/20/contents/enacted> (Accessed 28 October 2022).

³² UK Government (2010). The Flood and Water Management Act 2010 c.29. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2010/29/contents> (Accessed 28 October 2022).

³³ UK Government (2009). The Flood Risk Regulations 2009 No. 3042. (Online) Available at: <https://www.legislation.gov.uk/uksi/2009/3042/contents/made> (Accessed 28 October 2022).

³⁴ UK Government (1981). The Wildlife and Countryside Act 1981. SI 1981 c.69. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1981/69> (Accessed 28 October 2022).

³⁵ UK Government (2006). The Natural Environment and Communities Act 2006. SI 2006 c.16. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2006/16/contents> (Accessed 28 October 2022).

³⁶ UK Government (1997). The Hedgerows Regulations 1997 SI No. 1160. (Online) Available at: <https://www.legislation.gov.uk/uksi/1997/1160/contents/made> (Accessed 28 October 2022).

³⁷ UK Government (1980). The Highways Act 1980 C. 66. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1980/66> (Accessed 28 October 2022).

³⁸ UK Government (2015). The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015 SI No.1623. (Online) Available at: <https://www.legislation.gov.uk/uksi/2015/1623/contents> (Accessed 28 October 2022).

³⁹ UK Government (2017). The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. SI 2017 No. 407. (Online) Available at: <https://www.legislation.gov.uk/uksi/2017/407/contents/made> (Accessed 28 October 2022).

- The Reservoirs Act 1975⁴⁰;
- The Noise and Statutory Nuisance Act 1993 c.40⁴¹;
- The Planning (Listed Buildings and Conservation Areas) Act 1990⁴²;
- The Planning Act 2008¹;
- The Water Resources Act 1991⁴³;
- The Treasure Act 1996⁴⁴;
- The Traffic Management Act 2004⁴⁵;
- The Protection of Military Remains Act 1986⁴⁶;
- The Land Drainage Act 1991⁴⁷;
- The Land Drainage Act 1994⁴⁸;
- The Water Act 2003⁴⁹; and
- The Water Act 2014⁵⁰.

National Grid's statutory obligations

5.2.11 National Grid Electricity Transmission plc (referred to as National Grid throughout the ES) statutory obligations are set out in the Electricity Act 1989⁵¹ (the Electricity Act) and in the terms of its Transmission Licence (regulated by Ofgem). Under the Electricity Act, National Grid Electricity System Operator (NGESO) and National Grid Electricity Transmission (National Grid) must develop transmission network proposals in an

⁴⁰ UK Government (1975). The Reservoirs Act 1975 c.23. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1975/23> (Accessed 28 October 2022).

⁴¹ UK Government (1993). The Noise and Statutory Nuisance Act 1993 c.40. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1993/40/contents> (Accessed 28 October 2022).

⁴² UK Government (1990). The Planning (Listed Buildings and Conservation Areas) Act 1990 SI 1990 c.17. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1990/9/contents> (Accessed 28 October 2022).

⁴³ UK Government (1991). The Water Resource Act 1991. SI 1997 c.57. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1991/57/contents> (Accessed 28 October 2022).

⁴⁴ UK Government (1996). The Treasure Act 1996 c.24. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1996/24/contents> (Accessed 28 October 2022).

⁴⁵ UK Government (2004). The Traffic Management Act 2004 c.18. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2004/18/contents> (Accessed 28 October 2022).

⁴⁶ UK Government (1986). The Protection of Military Remains Act 1986 c. 35. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1986/35/contents> (Accessed 28 October 2022).

⁴⁷ UK Government (1991). The Land Drainage Act 1991. SI 1991 c.59. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1991/59/contents> (Accessed 28 October 2022).

⁴⁸ UK Government (1994). The Land Drainage Act 1994. SI 1994 C.25. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1994/25/contents> (Accessed 28 October 2022).

⁴⁹ UK Government (2003). The Water Act 2003. SI 2003 c.37. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2003/37/contents> (Accessed 28 October 2022).

⁵⁰ UK Government (2014). The Water Act 2014. SI 2014 c.21. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2014/21/contents/enacted> (Accessed 28 October 2022).

⁵¹ UK Government (1989). Electricity Act 1989. (Online) Available at: <https://www.legislation.gov.uk/ukpga/1989/29/contents> (Accessed 28 October 2022).

efficient, coordinated and economical way, whilst having regard to the desirability of preserving amenity. Schedule 9 of the Electricity Act states:

(1)“In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate, distribute, supply or participate in the transmission of electricity

(a)shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

(b)shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.”

5.2.12 This means that, when National Grid considers options to deliver additional network capability, it must balance the need to develop the network in a way that is efficient, coordinated and economical and minimises impact on people and places.

5.3 National planning policy context

National Policy Statements

5.3.1 Part 2 of the Act makes provision for NPSs, which comprise the Government’s objectives for the development of NSIPs and set out national policy against which NSIP applications are assessed. Under Section 104 of the Act¹, the SoS is required to determine a DCO application in accordance with the relevant NPS, in cases where a NPS has effect, except in certain limited circumstances set out in Subsections 104(4) to (8) such as:

- 1) it would lead to the United Kingdom being in breach of any of its international obligations⁵²;
- 2) it would lead to the SoS being in breach of any duty imposed on the SoS by or under any enactment⁵³;
- 3) it would be unlawful⁵⁴;
- 4) the adverse impact of the proposed development would outweigh its benefits⁵⁵;
or
- 5) it would be contrary to regulations about how decisions are to be taken⁵⁶.

5.3.2 The following NPS’s are of relevance to the Project:

- Overarching NPS for Energy (EN-1)⁵⁷; and

⁵² Planning Act 2008¹. Section 104(4)

⁵³ Planning Act 2008¹. Section 104(5)

⁵⁴ Planning Act 2008¹. Section 104(6)

⁵⁵ Planning Act 2008¹. Section 104(7)

⁵⁶ Planning Act 2008¹. Section 104(8)

⁵⁷ Department of Energy and Climate Change (2011). Overarching National Policy Statement for Energy (EN-1). (Online) Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf (Accessed 28 October 2022).

- NPS for Electricity Networks Infrastructure (EN-5)⁵⁸.

5.3.3 In addition to the NPS, the SoS is required to have regard to factors such as any local impact report⁵⁹ provided by a relevant local authority, the desirability of preserving a listed building or its setting (where relevant), and any other matters which the SoS considers to be both important and relevant to his decision as required under section 104(2)(d) of the Act¹.

Overarching National Policy Statement for Energy (EN-1)

5.3.4 NPS EN-1 sets out the Government’s policy for the delivery of major energy infrastructure in England and Wales. It recognises that there is a requirement to provide new energy infrastructure to meet the need for 59GW of new electricity capacity across the UK by 2025.

5.3.5 Paragraph 4.1.2 states that given the level and urgency of need for infrastructure covered by Part 3 of NPS-EN1, the decision maker should start with a presumption in favour of granting consent to applications for energy NSIPs. The presumption applies unless any more specific policies set out in relevant NPSs clearly indicate that consent should be refused, subject to the provisions of Section 104 of the Act¹. Paragraph 4.1.3 states that *“in considering any proposed development, and in particular when weighing its adverse effects against its benefits, the decision maker should take into account:*

- *its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and*
- *its potential adverse impacts, including any long term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts”.*

5.3.6 In this context, environmental, social and economic benefits and adverse effects, at national, regional and local levels should be taken into account. The NPS provides guidance on assessment relevant to all energy projects, which is supplemented by guidance specific to the project type. In the case of this Project, the relevant guidance is to be found in the NPS for Electricity Networks Infrastructure (EN-5). EN-1⁵⁷ recognises that *“in most cases, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example, by overhead line or underground cable) and the costs and benefits of these alternatives should be properly considered as set out in EN-5 (in particular section 2.8) before any overhead line proposal is consented.”* (EN-1 paragraph 3.7.10).

5.3.7 Paragraph 4.1.5 notes the decision maker may consider local planning policy such as Development Plan Documents or other documents in the Local Development Framework in its decision making. However, in the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of decision making given the national significance of the infrastructure.

⁵⁸ Department of Energy and Climate Change (2011). National Policy Statement for Electricity Networks Infrastructure (EN-5). (Online) Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47858/1942-national-policy-statement-electricity-networks.pdf (Accessed 28 October 2022).

⁵⁹ A “local impact report” is a report in writing giving details of the likely impact of a proposed development on a local authority’s area (or any part of that area) as defined in Section 60 of the Act¹.

5.3.8 Section 4.4 of EN-1 provides guidance on the consideration of alternative options for infrastructure projects, including the principles that should guide the relevant SoS when deciding what weight to give to alternative options. This includes “*alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the ... decision*”.

National Policy Statement for Electricity Networks Infrastructure (EN-5)

5.3.9 NPS EN-5 highlights that the UK needs new electricity generating infrastructure to move to a low carbon economy, while maintaining security of supply and will be heavily dependent on the availability of an electricity network which is fit for purpose and robust. That network will need to be able to support a more complex system of supply and demand and cope with generation occurring in locations of greater diversity. It indicates that the SoS should start its assessment of applications for infrastructure covered by EN-5 on the basis that ‘need’ has been demonstrated.

5.3.10 EN-5 does not seek to direct applicants to particular sites or routes for electricity networks infrastructure (paragraph 2.2.1). It notes that the general location of electricity network projects is often determined by the location, or anticipated location, of a particular generating station in relation to the existing network. In other cases, the requirement for a line may be the result of the need for more strategic reinforcement of the network. EN-5 accepts that the most direct route for a new connection may not be the most appropriate given engineering and environmental considerations (paragraph 2.2.2).

5.3.11 Part 2 of EN-5 sets out the basis for assessing development consent applications. It advises for a variety of aspect areas what the applicant’s own assessments should address and what principles should be adopted in decision-making. It also advises on the weight to be given to certain issues and on the treatment of mitigation measures, particularly how these may be enforced through requirements or obligations. Particular aspect areas are:

- biodiversity and geological conservation – specifically the potential impacts of large birds colliding with overhead lines;
- landscape and visual – overhead lines can give rise to adverse impacts (or benefits where lines are reconfigured or rationalised); and
- noise and vibration – during operation of overhead lines under certain conditions.

5.3.12 EN-5 adds further detail to the general advice set out in EN-1. Paragraph 2.8.2 of EN-5 states that “*Government does not believe that development of overhead lines is generally incompatible in principle with developers’ statutory duty under section 9 of the Electricity Act to have regard to amenity and to mitigate impacts. In practice new above ground electricity lines, whether supported by lattice pylons/pylons or wooden poles, can give rise to adverse landscape and visual impacts, dependent upon their scale, siting, degree of screening and the nature of the landscape and local environment through which they are routed. For the most part these impacts can be mitigated, however at particularly sensitive locations the potential adverse landscape and visual impacts of an overhead line proposal may make it unacceptable in planning terms, taking account of the specific local environment and context.*”

- 5.3.13 EN-5 goes on to say that although Government expects that overhead lines will often be appropriate and their effects can often be mitigated, where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the decision maker “*will have to balance these against other relevant factors, including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding)*”.
- 5.3.14 EN-5 notes that the decision maker should expect applicants to demonstrate good design in respect of landscape and visual amenity and in the design of the proposed development to mitigate effects such as noise and electric and magnetic fields.
- 5.3.15 EN-5 gives its support to the Holford Rules, stating that the decision maker “*should recognise that the Holford Rules, and any updates, form the basis for the approach to routeing new overhead lines and take them into account in any consideration of alternatives and in considering the need for any additional mitigation measures*”. It also states that the Holford Rules “*should be followed by developers when designing their proposals*”.
- 5.3.16 EN-5 states that consent should only be refused for overhead line proposals in favour of an underground line if “*...the benefits from the non-overhead line alternative will clearly outweigh any extra economic, social and environmental impacts and the technical difficulties are surmountable*”. In this context it should consider:
- “*the landscape in which the proposed line will be set, (in particular, the effect on residential areas, and those of natural beauty or historic importance such as National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Broads);*
 - *the additional cost of any undergrounding; and*
 - *the environmental and archaeological consequences of undergrounding.*”
- 5.3.17 In terms of substations, paragraph 2.8.2 of EN-5⁵⁸ notes that “*New substations, sealing end compounds and other above ground installations that form connection, switching and voltage transformation points on the electricity networks can also give rise to landscape and visual impacts*”. In section 2.2 (relating to Factors influencing site selection by applicants) EN-5 notes that “*There will usually be some flexibility around the location of the associated substations and applicants will give consideration to how they are placed in the local landscape taking account of such things as local topography and the possibility of screening*”.
- 5.3.18 **Table 5.1** summarises where, within this ES, information relevant to the assessment of the Project under the NPSs is located.

Emerging National Policy Statements

Emerging Overarching National Policy Statement for Energy (EN-1) and Electricity Networks Infrastructure (EN-5)

- 5.3.19 The 2020 UK Government Energy White Paper⁶⁰ confirmed that the government has “*decided that it is appropriate to review the NPS, to ensure that they reflect the policies*

⁶⁰ Department for Business, Energy and Industrial Strategy (2020). Energy White Paper: Powering our net zero future. (Online). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf (Accessed 28 September 2022).

set out in this white paper and that we continue to have a planning policy framework which can deliver the investment required to build the infrastructure needed for the transition to net zero”.

- 5.3.20 In September 2021, the Government consulted on the Draft Overarching National Policy Statement for Energy (EN-1) and the Draft National Policy Statement for Electricity Networks Infrastructure (EN-5). The principal purpose for the consultation was “to identify whether the revised energy National Policy Statements presented are fit for purpose i.e. whether they provide a suitable framework to support decision making for nationally significant energy infrastructure”⁶¹. The Consultation on the draft NPSs closed on 29 November 2021. The House of Commons BEIS Committee reported on the Revised (Draft) NPS for Energy on 22 February 2022, providing recommendations in relation to the suite of revised draft NPSs.
- 5.3.21 While this review is undertaken, the current suite of energy NPSs remain relevant Government policy and, therefore, the extant 2011 NPSs listed above continue to have effect for the purposes of the Act. Where draft NPS EN-1 or draft NPS EN-5 introduces proposed policy (including assessment principles and policy concerning the consideration of generic impacts) that is substantively different to that contained in the designated NPS EN-1 and NPS EN-5, this is referenced in the relevant sections of the planning policy assessment set out in **Section 8.2 and 8.3 of the Planning Statement (Volume 7, Document 7.1)**,

Table 5.1 – Location of the information on environmental effects identified in national planning policy EN-1 and EN-5 in this ES

EN-1 Subsection	EN-5 Subsection	ES Reference
4.2 Environmental Statement - cumulative effects	Not applicable	Chapter 4: Approach to preparing the ES (Volume 5, Document 5.2.4 and Chapter 18: Cumulative Effects (Volume 5, Document 5.2.18)
4.2 Environmental statement - flexibility	Not applicable	Chapter 3: Description of the Project (Volume 5, Document 5.2.3) and Chapter 4: Approach to preparing the ES (Volume 5, Document 5.2.4)
4.3 Habitat and Species Regulations	Not applicable	Chapter 8: Biodiversity (Volume 5, Document 5.2.8)
4.4 Alternatives	Not applicable	Chapter 2: Project need and alternatives (Volume 5, Document 5.2.2)

⁶¹ Department for Business, Energy and Industrial Strategy. (2021). Planning for New Energy Infrastructure. (Online). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015302/nps-consultation-document.pdf (Accessed 10 June 2022).

EN-1 Subsection	EN-5 Subsection	ES Reference
4.5 Good design	2.5.2 Consideration of good design	Chapter 2: Project need and alternatives (Volume 5, Document 5.2.2) and Chapter 3: Description of the Project (Volume 5, Document 5.2.3)
4.8 Climate change adaptation	2.4 Climate change adaptation	Chapter 3: Description of the Project (Volume 5, Document 5.2.3) and Chapter 9: Hydrology (Volume 5, Document 5.2.9)
4.13 Health	Not applicable	Chapter 15: Health and wellbeing (Volume 5, Document 5.2.15)
5.2 Air quality and emissions	Not applicable	Chapter 13: Air Quality (Volume 5, Document 5.2.13)
5.3 Biodiversity and geological conservation	2.7 Biodiversity and geological conservation	Chapter 8: Biodiversity (Volume 5, Document 5.2.8) and Chapter 10: Geology and Hydrogeology (Volume 5, Document 5.2.10)
5.4 Civil and military aviation and defence interests	Not applicable	Chapter 15: Health and Wellbeing (Volume 5, Document 5.2.15)
5.5 Coastal change	Not applicable	Not applicable
5.6 Dust, odour, artificial light, smoke, steam and insect infestation	Not applicable	Chapters 6: Landscape and Visual (Volume 5, Document 5.2.6), Chapter 8: Biodiversity (Volume 5, Document 5.2.8) and Chapter 13: Air Quality (Volume 5, Document 5.2.13)
5.7 Flood risk	Not applicable	Chapter 9: Hydrology (Volume 5, Document 5.2.9)
5.8 Historic environment	Not applicable	Chapter 7: Historic Environment (Volume 5, Document 5.2.7)
5.9 Landscape and visual	2.8 Landscape and visual	Chapters 6: Landscape and Visual (Volume 5, Document 5.2.6)

EN-1 Subsection	EN-5 Subsection	ES Reference
5.10 Land use including open space, green infrastructure and green belt	Various chapters	Chapters 6: Landscape and Visual (Volume 5, Document 5.2.6) and Chapter 8: Biodiversity (Volume 5, Document 5.2.8)
5.11 Noise and vibration	2.9 Noise and vibration	Chapter 14: Noise and Vibration (Volume 5, Document 5.2.14)
5.12 Socio-economics	Not applicable	Chapter 16: Socio-economics (Volume 5, Document 5.2.16)
5.13 Traffic and transport	Not applicable	Chapter 12: Traffic and Transport (Volume 5, Document 5.2.12)
5.14 Waste management	Not applicable	Chapter 3: Description of the Project (Volume 5, Document 5.2.3), Code of Construction Practice, Appendix 3B, Document 5.3.3B
5.15 Water quality and resources	Not applicable	Chapter 9: Hydrology (Volume 5, Document 5.2.9) and Chapter 10: Geology and hydrogeology (Volume 5, Document 5.2.10)

National Planning Policy Framework

- 5.3.22 Regard must also be had to the National Planning Policy Framework (NPPF)⁶². Whilst paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs, the NPPF itself may be considered by the SoS to be an “important and relevant” consideration to its decision in accordance with s104 of the Act¹. The NPPF sets out the Government’s economic, environmental and social planning policies for England and how these should be applied. The NPPF helps inform decision-making on planning applications, as well as local and neighbourhood plans.
- 5.3.23 The NPPF is supported by Planning Practice Guidance⁶³ (PPG) which was first published in March 2015. This guidance is updated on a regular basis and provides advice on a range of topics related to the implementation of NPPF policies. The key PPG topics considered relevant to the Project at this stage are as follows:

⁶² Ministry of Housing, Communities & Local Government (2021). National Planning Policy Framework. (Online) Available at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2> (Accessed 28 October 2022).

⁶³ Ministry of Housing, Communities & Local Government (2021). Planning Practice Guidance. (Online) Available at: <https://www.gov.uk/government/collections/planning-practice-guidance> (Accessed 8 July 2021).

- Air quality;
- Climate change;
- Environmental Impact Assessment;
- Flood risk and coastal change;
- Green Belt;
- Historic Environment;
- Natural Environment;
- Noise;
- Open space, sports and recreation facilities, public rights of way and local green space;
- Travel plans, Transport Assessments and Statements; and
- Water supply, waste water and water quality.

5.3.24 Although the NPPF does not contain policies relating to NSIPs, it does include policies pertinent to generic development management considerations and some of its principles may be considered where relevant to the Project. These principles are concerned with protection and conservation of the natural and built and historic environment, climate change and flooding as well as sustainable growth, development and a strong, competitive economy.

5.3.25 The individual environmental aspect chapters (**Chapter 6 to Chapter 18, Volume 5, Documents 5.2.6 to 5.2.18**) include a summary of the NPPF paragraphs relevant to them. In addition, further detail on the relevant sections of the NPPF will be identified and assessed in the planning statement.

Local Plan Policy

5.3.26 Although an application for development consent is not subject to Section 38(6) of the Planning and Compulsory Purchase Act 2004⁶⁴, Local Development Plans are capable of being important and relevant planning considerations.

5.3.27 A summary of the relevant local plan position is included in **Table 5.2** below. Key policies are discussed within the respective aspect chapters (**Chapter 6 to Chapter 18 of the ES, Volume 5, Documents 5.2.6 to 5.2.18**). Further details on the local policy context are presented in **Chapter 9 and Appendix C of the Planning Statement (Volume 7, Document 7.1)** which accompanies the **draft DCO (Volume 3, Document 3.1)**.

Table 5.2 – Relevant development plan documents

Plan	Summary
Harrogate Borough Council	

⁶⁴ UK Government (2004). Planning and Compulsory Purchase Act 2004. 2004 c.5. (Online) Available at: <https://www.legislation.gov.uk/ukpga/2004/5/contents> (Accessed 28 October 2022).

Plan	Summary
Harrogate District Local Plan 2014-2035 (Harrogate Borough Council, 2020) ⁶⁵	The Harrogate District Local Plan 2014-2035, adopted 4 March 2020, sets out the spatial vision and development strategy for Harrogate District. The Local Plan sets the scale of new development that is planned and a strategy for accommodating this growth; includes detailed policies across several thematic areas to manage new development; and allocates specific sites for particular types of development.
Hambleton District Council	
Hambleton Local Plan – Adopted February 2022 (Hambleton District Council) ⁶⁶	The Hambleton Local Plan was adopted on 22 February 2022. The Local Plan sets out a strategy for development within Hambleton up to 2036. The Plan also sets out the policy framework which will be used to determine proposals for development across the district and for enforcement purposes.
City of York Council	
Draft Development Control Local Plan (City of York Council, 2005) ⁶⁷	The Draft Development Control Local Plan was approved for development management purposes in 2005. Although not 'formally adopted', this is the document used as the basis for planning application decisions.
City of York Local Plan – Publication Draft (City of York, 2018) ⁶⁸	The new Local Plan is currently undergoing examination, having been submitted to the SoS on 25 May 2018. The Local Plan covers the period from 2017 to 2032/33. Once finalised and adopted, the Local Plan will be used to manage development through the determination of planning applications.
Upper Poppleton and Nether Poppleton Neighbourhood Plan (Upper Poppleton Parish Council and Nether Poppleton Parish Council, 2017)	The Upper Poppleton and Nether Poppleton Neighbourhood Plan was formally adopted or 'made' by City of York Council Executive on 19 October 2017. This Neighbourhood Plan is used when determining planning applications within the identified Upper Poppleton and Nether Poppleton Neighbourhood Area.

⁶⁵ Harrogate Borough Council (2020). Harrogate district Local Plan 2014-2035. (Online) Available at: <https://www.harrogate.gov.uk/planning-policy-guidance/harrogate-district-local-plan-2014-2035> (Accessed 28 July 2021).

⁶⁶ Hambleton District Council (2022). Hambleton Local Plan. Adopted February 2022. (Online). Available at: <https://www.hambleton.gov.uk/downloads/file/2745/hambleton-local-plan-final-february-2022> (Accessed 10 June 2022).

⁶⁷ City of York Council (2005). City of York Local Plan Publication Draft. (Online) Available at: <https://www.york.gov.uk/downloads/download/820/the-development-control-local-plan-2005-and-proposals-maps> (Accessed 10 August 2021)

⁶⁸ City of York Council (2018). City of York Local Plan Publication Draft. (Online) Available at: <https://www.york.gov.uk/downloads/download/581/local-plan-publication-draft-2018-consultation> (Accessed 10 August 2021)

Plan	Summary
North Yorkshire County Council	
Minerals and Waste Joint Plan (City of York Council, North York Moors National Park Authority, and North Yorkshire County Council, 2015 to 2030) ⁶⁹	The Minerals and Waste Joint Plan was adopted by North Yorkshire County Council ⁷⁰ on 16 February 2022, by the North York Moors National Park Authority on 21 March 2022 and City of York Council adopted the Plan on 27 April 2022. The Plan contains policies to guide decisions about matters such as where, when and how minerals and waste developments should be planned and controlled up to 31 December 2030.
Leeds City Council	
Unitary Development Plan Review (Leeds City Council, 2006) ⁷¹	The Unitary Development Plan (UDP) Review (2006) forms the statutory development plan for the whole of Leeds District, and will gradually be replaced by the emerging Local Plan. It provides a framework for all new developments and is used as a basis for making decisions regarding land use and planning applications. A schedule of the saved policies from the UDP are set out in Appendix 1 of the Core Strategy (see below).
Natural Resources and Waste Local Plan (Leeds City Council, 2015) ⁷²	The Natural Resources and Waste Local Plan is part of the Local Plan for Leeds. The Plan sets out where land is needed to manage resources like minerals, energy, waste and water over the next 15 years. It identifies actions to use natural resources in a more efficient way. It was adopted on 16 January 2013 and revised in September 2015.

⁶⁹ North Yorkshire County Council, City of York Council, North York Moors National Park Authority (2015 to 2033). Minerals and Waste Joint Plan – Publication Draft. (Online) Available at: <https://www.york.gov.uk/downloads/file/7874/mwjp-minerals-and-waste-joint-plan> (Accessed 21 July 2022).

⁷⁰ The local authorities' boundaries and titles are correct at the time of submission November 2022. North Yorkshire County Council, Hambleton District Council, Selby District Council, Ryedale District Council, Scarborough Borough Council, Harrogate Borough Council, Craven District Council and Richmondshire District Council are expected to form a new single council (North Yorkshire Council) on 1 April 2023 as a result of Local Government Reorganisation

⁷¹ Leeds City Council (2006). Leeds Unitary Development Plan. (Online) Available at: <https://www.leeds.gov.uk/planning/planning-policy/adopted-local-plan/unitary-development-plan> (Accessed 25 June 2021).

⁷² Leeds City Council (2015). Adopted Natural Resources and Waste Local Plan. (Online) Available at: <https://www.leeds.gov.uk/docs/Adopted%20Consolidated%20NRWLP%20Inc%20Policies%20Mins%2013-14.pdf> (Accessed 25 June 2021).

Plan	Summary
Core Strategy (Leeds City Council, 2019) ⁷³	The Core Strategy, adopted in November 2014 and updated in 2019, is the main strategic document within the Local Plan for Leeds and sets out the strategic policy framework for the district to 2028 and a housing requirement to 2033. It comprises a long-term spatial vision and strategic objectives, a spatial strategy, thematic policies and a monitoring and implementation framework. It is also used in determining planning applications.
Selby District Council	
Selby District Local Plan (Selby District Council, 2005) ⁷⁴	The Selby District Local Plan (SDLP) was formally adopted on 8 February 2005. The Local Plan develops and underpins many of the aims and objectives of the Council. It provides a comprehensive land-use framework for promoting, co-ordinating and controlling future development. The Core Strategy and 'saved' SDLP policies make up the Local Plan for the District.
Selby District Core Strategy Local Plan (Selby District Council, 2013) ⁷⁵	The Core Strategy is the long-term strategic vision for how the District will be shaped by setting out a number of broad policies to guide development. The Council's Core Strategy was adopted on 22 October 2013. The Core Strategy is the main document in the Council's suite of planning documents.
Preferred Options Local Plan (Selby District Council, 2021) ⁷⁶	A six-week consultation was held between 29 January 2021 and 12 March 2021 for the Preferred Options Local Plan 2021. The final version of the Plan is scheduled to be adopted in January 2023. The Plan is a vision and framework for future growth in the District, identifying where new housing, employment and other development could take place. It also sets out the policies to be used when deciding planning applications.

Advice Notes

5.3.28 The Planning Inspectorate has a series of advice notes that are intended to inform applicants, consultees, the public and others about a range of process matters in

⁷³ Leeds City Council (2019). Leeds Core Strategy: Leeds Local Plan, 2019. (Online) Available at: <https://www.leeds.gov.uk/planning/planning-policy/adopted-local-plan/core-strategy-introduction> (Accessed 10 August 2021)

⁷⁴ Selby District Council (2005). Selby District Local Plan. (Online) Available at: <https://www.selby.gov.uk/selby-district-local-plan-sdlp-2005> (Accessed 25 June 2021)

⁷⁵ Selby District Council (2013). Selby District Core Strategy Local Plan. (Online) Available at: https://www.selby.gov.uk/sites/default/files/Documents/CS_Adoption_Ver_OCT_2013_REDUCED.pdf (Accessed 25 June 2021).

⁷⁶ Selby District Council (2021). Selby District Council Local Plan Preferred Options Consultation. (Online) Available at: <https://www.selby.gov.uk/localplan> (Accessed 10 August 2021)

relation to the Act¹. The advice notes which deal with the Act¹ process are non-statutory. *“They are published to provide advice and information on a range of issues arising throughout the whole life of the application process. Although in many cases they include recommendations from the Planning Inspectorate about the approach to particular matters of process, which applicants and others are encouraged to consider carefully, it is not a requirement for applicants or others to have regard to the content of advice notes”*. Local Planning Policy

5.4 Required authorisations

Appropriate Assessment and Habitats Regulations Assessment

5.4.1 Two European wildlife sites are located within 2km of the Project:

- Lower Derwent Valley Ramsar Site; and
- Lower Derwent Valley Special Protection Area (SPA).

5.4.2 In addition to the assessment of potential effects on these sites that is presented in the ES, there is a requirement under the Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019⁷⁷ (the Habitats Regulations) to undertake a screening exercise to determine whether any of these (or other) sites within the National Site Network are likely to be significantly affected by the proposed development, either alone or in combination with other plans and projects. If significant effects are likely, there will be a need for an Appropriate Assessment (AA) to be carried out. The screening, AA and any subsequent assessment all form part of what is referred to as the Habitats Regulations Assessment (HRA) process.

5.4.3 The HRA for a NSIP is further detailed within Planning Inspectorate Advice note ten⁷⁸ which details the four stage DCO HRA process as:

- HRA Stage 1 - The scope of the HRA should be defined and justified. The HRA should include screening for Likely Significant Effects (LSE) (alone or in combination with other plans or projects). If there are no LSE identified for all the sites considered, then the report is likely to take the form of a 'No Significant Effects Report' (NSER) and HRA stages 2-4 will not be required.
- HRA Stage 2 - If Stage 1 identifies LSE for any of the sites considered, an assessment of the implications of the Project on the site(s)' conservation objectives will be required. This will take the form of a HRA Report and should include sufficient information for the AA.
- HRA Stages 3 and 4 - If Stage 2 concludes that the Project will adversely affect the integrity of the site(s), or is inconclusive; consideration of alternatives, compensatory

⁷⁷ UK Government (2019). The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. (Online) Available at:

<https://www.legislation.gov.uk/ukdsi/2019/9780111176573> (Accessed 28 October 2022).

⁷⁸ The Planning Inspectorate (2015). Advice Note Ten: Habitat Regulations Assessment relevant to nationally significant infrastructure projects. (Version 9). (Online) Available at:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-ten/> (Accessed 28 October 2022).

measures and whether the Project is justified by Imperative Reasons of Overriding Public Interest (IROPI) will be required. This will also form part of the HRA Report.

- 5.4.4 As HRA Stage 1 states, if one or more significant effects are likely to occur, it is then necessary to proceed to HRA stage 2, however given the absence of any LSE associated with the proposed development, the HRA for the Project takes the form of a NSER.
- 5.4.5 The **No Significant Effects Report (NSER) (Habitats Regulations Assessment Screening)** is included within the DCO submission as **Volume 6, Document 6.4**.
- 5.4.6 The screening process has concluded that the Project, alone or in combination with other developments, would result in no LSE on any of the qualifying features of any sites within the National Site Network within the Study Area, and a NSER (which includes all relevant sites designated for their international importance as agreed with Natural England during the screening stage) has been prepared for the Project (see No Significant Effects Report, **Volume 6, Document 6.4**). Natural England has confirmed agreement with the NSER and its conclusions.

Other Consents Required

- 5.4.7 The principal consent for the Project will be a development consent order (DCO), granted under the Act¹, which enables many consents and powers to be dealt with at the same time. The DCO application may, however, need to be supplemented by applications for other consents or licences. These have been identified during the course of project development and EIA and appropriate consultations have taken place with organisations such as the local highway authorities, Natural England, the Environment Agency and others as appropriate. The **Details of Other Consents and Licences (Volume 7, Document 7.3)** sets out which consents and licences which will be sought separately in due course.

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